

ORIGINAL

FEDERAL MARITIME COMMISSION

OCEAN COMMON CARRIER STATUS
OF SHANGHAI HAI HUA SHIPPING
Co., Ltd. (HASCO)

SNL/HASCO CROSS SPACE
CHARTER AND SAILING
AGREEMENT, FMC AGREEMENT
No. 011807

Docket No. 02-09

Served : February 24, 2003

ORDER DISMISSING PROCEEDING

The above-captioned proceeding is an investigation to determine whether Shanghai Hai Hua Shipping Co., Ltd. ("HASCO") is an ocean common carrier and therefore eligible to enter into an agreement with Sinotrans Container Lines, Ltd. ("Sinolines"). This proceeding was initiated by an Order of Investigation, Request for Additional Information, and Order to Show Cause ("Order to Show Cause") addressed to the two parties who filed Agreement No. 011807, HASCO and Sinolines. The Commission's Bureau of Enforcement ("BOE") was made a party to the proceeding.

THE PROCEEDING TO DATE

The Order to Show Cause set forth facts which indicated that HASCO did not presently operate, and had not previously operated, any vessel in the U.S. foreign trade, and that HASCO appeared to be planning to time-subcharter a vessel from Sinolines to be operated in a service with other Sinolines vessels under the agreement, and ordered HASCO to show cause why the Commission should not conclude that HASCO could not be considered an “ocean common carrier” eligible to enter into an agreement subject to the Shipping Act of 1984, 46 U.S.C. § 1701 et seq. (“Shipping Act”). The Order to Show Cause also noted that HASCO had filed a Form FMC-1 in which it reported that it would operate as a vessel-operating common carrier and published a tariff (No. 017636-001) which identifies the specific rules, rates and port ranges by which HASCO holds out to furnish vessel-operating common carrier services to the public, although it does not operate any vessels in the trades covered by its tariff. Therefore, the Commission ordered HASCO to show cause why HASCO’s tariff No. 017636-001 should not be cancelled. Noting that the agreement did not reflect the arrangement by which Sinolines agreed to sub-charter a vessel to HASCO, the Commission also ordered the parties to show cause why the agreement failed to reflect the complete understanding of the parties, as required by 46 C.F.R. § 535.103(g).¹

¹ Section 535.103(g) provides, inter alia, that each filed agreement must be “clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among
(continued...) ”

The parties responded to the Request for Additional Information and the case has been fully briefed. Numerous additional pleadings were filed in which the parties requested specific procedural or other relief.* All but HASCO's Petition for Protective Order were addressed in Commission orders served on September 5, 2002, and January 13, 2003.

On February 10, 2003, Sinolines filed a notice of termination of the agreement and HASCO filed a Petition to Dismiss this proceeding. HASCO states in its Petition to Dismiss that Sinolines supports the Petition and will file no reply, and that BOE has no objection to the Petition. HASCO also states that its tariff has been "terminated" by its tariff publisher and that HASCO did not at any time book or carry cargo in the U.S. trades.

DISCUSSION

This proceeding was instituted in order to address the question of whether HASCO, a carrier which does not operate

(...continued)
the agreement members."

² Sinolines requested an order of confidentiality for information contained in its Response to the Request for Additional Information and certain documents it had produced. HASCO filed a Request for Oral Argument, a Petition for Limited Hearing to Cross-Examine BOE's Witness, a Motion to Strike BOE's Response to HASCO's Motion for Shortened Review, a Petition for Leave to File a Reply to BOE's Response to HASCO's Petition for Limited Hearing, a *Vaughn* Index, and a Petition for Protective Order. BOE filed a Response to HASCO's Motion for Shortened Review, and a Petition for Injunctive Relief. Responses to each of these pleadings were filed by one or more of the other parties.

vessels in the U.S. trade, may become an ocean common carrier within the meaning of the Shipping Act by simultaneously entering into an agreement subject to the Shipping Act to charter a vessel from and share space on the vessel and arrange sailings in coordination with an existing vessel-operating common carrier under the agreement. This agreement has now been withdrawn by the parties, rendering the issues in this proceeding moot. The pending petition for a protective order is similarly moot.

THEREFORE, IT IS ORDERED That HASCO's Petition for Protective Order is dismissed as moot;

IT IS FURTHER ORDERED, That HASCO's Motion to Dismiss is granted; and

FINALLY, IT IS ORDERED, That this proceeding is dismissed.

By the Commission.

A handwritten signature in black ink, appearing to read 'Bryant L. VanBrakle', is written over the printed name.

Bryant L. VanBrakle
Secretary